

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of:	)	
	)	
Wireless Telecommunications Bureau Seeks	)	WT Docket No. 11-79
Comment on Spectrum Needs for the	)	DA 11-838
Implementation of the Positive Train Control	)	
Provisions of the Rail Safety Improvement Act	)	
of 2008	)	

**REPLY COMMENTS**

National Railroad Passenger Corporation (“Amtrak”) hereby replies to comments filed in response to the Wireless Telecommunications Bureau’s May 5, 2011 Public Notice<sup>1</sup> (the “Public Notice”) in the above-referenced proceeding. With few exceptions, commenters agree that in order for the rail industry to implement the positive train control (“PTC”) provisions of the Rail Safety Improvement Act of 2008 (“RSIA”),<sup>2</sup> the FCC should (i) make additional spectrum available for licensing in the 217-222 MHz band, and (ii) make appropriate changes to the licensing and technical rules currently imposed on radio services operating in this band in order to facilitate PTC operations. Amtrak supports both recommendations, and urges the Commission expeditiously to take appropriate administrative action to ensure the timely and successful deployment of PTC by the nation’s railroads.

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<sup>1</sup> Wireless Telecommunications Bureau Seeks Comment on Spectrum Needs for the Implementation of the Positive Train Control Provisions of the Rail Safety Improvement Act of 2008, Public Notice, DA 11-838 (WTB rel. May 5, 2011) (“Public Notice”).

<sup>2</sup> Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (2008).

## **I. THE FCC WILL NEED TO MAKE ADDITIONAL SPECTRUM AVAILABLE FOR LICENSING IN THE 217-222 MHZ BAND TO ACCOMMODATE PTC**

There is broad agreement in this proceeding that the Commission will need to make more spectrum available for licensing to rail carriers for use in implementing PTC on their lines.<sup>3</sup> As noted by most of the commenting rail carriers, because the RSIA requires that PTC systems be interoperable, significant system design, development and spectrum acquisitions by the freight rail industry in the range of 217-222 MHz have made this band the *de facto* home of PTC operations.<sup>4</sup> However, despite the various efforts noted by Amtrak and other commenters to obtain spectrum in this band in the secondary market, there is currently insufficient unencumbered spectrum available for PTC in this band on reasonable commercial terms to accommodate the unsatisfied needs of the entire rail industry.<sup>5</sup> The lack of sufficient spectrum availability is of particular concern in congested, urban areas, with heavy rail traffic.<sup>6</sup>

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<sup>3</sup> Comments of the American Chemistry Council, WT Docket No. 11-79, 1 (filed June 20, 2011) (“ACC Comments”); Comments of Central California Traction Company, WT Docket No. 11-79, 1 (filed June 28, 2011) (“CCT Comments”); Comments of Genesee & Wyoming Inc., WT Docket No. 11-79, 1 (filed June 16, 2011) (“GWI Comments”); Comments of the Metropolitan Transportation Authority, WT Docket No. 11-79, 7-9 (filed June 20, 2011) (“MTA Comments”); Comments of the National Railroad Passenger Corporation, WT Docket No. 11-79 (filed June 20, 2011) (“Amtrak Comments”); Comments of Northeast Illinois Regional Commuter Railroad Corporation / dba Metra, WT Docket No. 11-79, 1 (filed June 20, 2011) (“Metra Comments”); Comments of the Peninsula Corridor Joint Powers Board, WT Docket No. 11-79, 1-2 (filed June 20, 2011) (“Peninsula Comments”); Comments of PTC-220, LLC, WT Docket No. 11-79, 7 (filed June 20, 2011) (“PTC-220 Comments”); Comments of the Southern California Regional Rail Authority, WT Docket No. 11-79, 1-2 (filed June 20, 2011); Comments of Twin Cities & Western Railroad, WT Docket No. 11-79, 1 (filed June 27, 2011) (“TC&W Comments”).

<sup>4</sup> ACC Comments at 1; Amtrak Comments at 3; Comments of the American Public Transportation Association, WT Docket No. 11-79, 1 (filed June 20, 2011); Comments of the Association of American Railroads, WT Docket No. 11-79, 2-3 (filed June 20, 2011) (“AAR Comments”); CCT Comments at 1; Comments of CSX Transportation, Inc., WT Docket No. 11-79, 1 (filed June 21, 2011) (“CSX Comments”); Comments of the Dallas Area Rapid Transit Authority, WT Docket No. 11-79, 5 (filed June 20, 2011) (“DART Comments”); GWI Comments at 1; Metra Comments at 1; Comments of the Joint Council on Transit Wireless Communications, WT Docket No. 11-79, 2-3 (filed June 21, 2011) (“Joint Council Comments”); Comments of the Massachusetts Bay Transportation Authority, WT Docket No. 11-79, 3-1 (filed June 20, 2011) (“MassDOT Comments”); MTA Comments at 5; PTC-220 Comments at 2-4; TC&W Comments at 2.

<sup>5</sup> AAR Comments at 2; ACC Comments at 1; Amtrak Comments at 3-5; CCT Comments at 1; CSX Comments at 1; GWI Comments at 1; Joint Council Comments at 3; Comments of NJ Transit, WT Docket No. 11-79, 4-5 (filed May 27, 2011); Metra Comments at 1; MTA Comments at 7-9; Peninsula Comments at 1-2; PTC-220 Comments at 8; TC&W Comments at 1.

<sup>6</sup> ACC Comments at 2; Amtrak Comments at 7; CCT Comments at 2; CSX Comments at 2; GWI Comments at 2; Joint Council Comments at 5; Metra Comments at 2; PTC-220 Comments at 5; TC&W Comments at 2.

Given the very few existing licenses in the 218-219 MHz band<sup>7</sup> and the availability of other currently unused licenses in the 220-222 MHz band, a number of commenters urged the Commission to specifically reallocate up to 500 kHz of spectrum for PTC use in these bands.<sup>8</sup> Amtrak strongly supports such a reallocation, and hopes that the strong consensus from the rail industry will provide the impetus for the Commission to initiate the proceedings necessary to accomplish such a reallocation in very short order.

## **II. THE FCC WILL NEED TO MODIFY AND/OR WAIVE ITS LICENSING AND TECHNICAL RULES TO ACCOMMODATE PTC OPERATIONS IN THE 217-222 MHZ BAND**

In urging reallocation of spectrum for PTC in the 217-222 MHz band, a number of commenters ask the Commission to adopt technical rules changes in order to accommodate anticipated PTC operations.<sup>9</sup> The Commission has already waived a number of requirements imposed on the 220 MHz Radio Service to accommodate PTC, and has pending waiver requests from rail carriers to make similar allowances for operation on AMTS spectrum.<sup>10</sup> Although commenters may not have been unanimous in identifying the specific technical specifications that should govern PTC operations, the differences were of the type that can easily be resolved through cooperative industry/FCC discussions. Most important to the successful, timely

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<sup>7</sup> The Commission's Universal Licensing System ("ULS") indicates that there are no active licenses – either on the A- or B-Block (500 kHz of spectrum each) – in 693 of the service's 734 markets (94.4%). Of the 41 remaining markets, 34 have an active license on one, but not both of the blocks, meaning that at least 500 kHz of spectrum is available in 727 of the service's 734 markets (99.0%). In total, only 7 of the service's 734 markets are presently occupied with incumbents on both blocks. The operational status of these licenses remains an open question.

<sup>8</sup> ACC Comments at 2; AAR Comments at 5; Amtrak Comments at 6-8; DART Comments at 7-8; Joint Council Comments at 4; MTA Comments at 12; Peninsula Comments at 4.

<sup>9</sup> AAR Comments at 3-5; Amtrak Comments at 10-11; CCT Comments at 2; CSX Comments at 2; GWI Comments at 2; Joint Council Comments at 6; Metra Comments at 2; PTC-220 Comments at 9-10; TC&W Comments at 2.

<sup>10</sup> See e.g., Request of PTC-220, LLC for Waivers of Certain 220 MHz Rules, Memorandum Opinion and Order, 24 FCC Rcd 8537 (2009); see also, Nat'l Railroad Passenger Co. Request for Waiver of Certain Part 80 Technical Rules to Allow Construction of an Advanced Civil Speed Enforcement Sys. in the Automated Maritime Telecomms. System Band, Public Notice, 26 FCC Rcd 1979 (2011).

implementation of PTC, however, is that a rulemaking be initiated by the Commission as soon as practicable.

License issues regarding reallocated spectrum also should be easy to resolve given the apparent lack of any significant disagreements. For example, there is no support in the record to award new licenses through competitive auction, since the very purpose of PTC is to enhance public safety. Moreover, many of the rail carriers most in need of spectrum for PTC deployment – the passenger rail carriers – are publicly-funded ventures; requiring them to compete in a competitive auction for spectrum needed to comply with federal law for public safety purposes would be completely contrary to the public interest.

Nevertheless, commenters are sensitive to the fact that licenses must be fairly distributed and efficiently used. To that end, commenting carriers offered a number of suggestions as to how the Commission can achieve this objective, including: restricting initial license eligibility to passenger rail carriers,<sup>11</sup> limiting the amount of spectrum carriers can acquire in the first instance,<sup>12</sup> limiting license/coverage areas to specifically defined geographic corridors surrounding a carrier's rail lines,<sup>13</sup> and requiring that channel assignments be made through an authorized frequency coordinator.<sup>14</sup> Amtrak concurs with such objectives, all of which can, and should be explored expeditiously in rulemaking proceedings.

Only two filers – the group of companies controlled by Warren Havens and Communications Architecture, a consultant hired by Mr. Havens' companies – appear to oppose

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<sup>11</sup> Without denying the likelihood that the freight rail industry will require additional spectrum in the future, the inability of the passenger rail industry to acquire spectrum in the secondary market has created an immediate spectrum need for passenger rail carriers. Joint Council Comments at 4; Peninsula Comments at 5.

<sup>12</sup> Amtrak Comments at 9-10.

<sup>13</sup> AAR Comments at 5-6; Amtrak Comments at 8-10; NJ Transit Comments at 5; PTC-220 Comments at 6.

<sup>14</sup> Amtrak Comments at 9-10; AAR Comments at 6; NJ Transit Comments at 6.

any allocation of spectrum to the rail industry for PTC purposes.<sup>15</sup> Mr. Havens is well known to the Commission for his efforts to impede PTC implementation by opposing carriers' efforts to obtain spectrum in the secondary market and associated rules waivers, and by filing against parties seeking additional spectrum for rail carriers for this purpose. Mr. Havens apparently is convinced that the only way to satisfy the objectives of the RSIA is by using the spectrum held by his companies for a yet-to-be constructed, or even cogently described, Intelligent Transportation system.<sup>16</sup> Indeed, Mr. Havens has warehoused a significant amount of spectrum over the last several years in the 217-222 MHz band, apparently in the hope that some industry will support his particular efforts to develop his approach to an Intelligent Transportation network for his own pecuniary benefit.

Amtrak recognizes that there may be a variety of alternatives for providing a safer transportation network; however, Congress has mandated the implementation of PTC on this nation's rails, and Mr. Havens' objections notwithstanding, the rail industry must – and Amtrak will – satisfy that statutory mandate. The record demonstrates that the 217-222 MHz band is favored for that implementation, but Mr. Havens has not shown any inclination to engage in reasonable secondary market transactions that would make his warehoused spectrum in this band

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<sup>15</sup> Comments of Skybridge et al., WT Docket No. 11-79 (filed June 20, 2011); Comments of Communications Architects, WT Docket No. 11-79 (filed June 20, 2011).

<sup>16</sup> Indeed, in a filing made on July 1, 2011 with regard to the efforts of the Southern California Regional Rail Authority to seek relief for SCCRA's secondary market transaction with MCLM, Inc., and specifically to have its applications for assignment of some of MCLM, Inc.'s licenses removed from the issues being heard in Docket No. 11-71, Mr. Havens' and his affiliated entities' motives in opposing the rail carriers efforts to obtain additional spectrum for PTC in this matter are clear. Thus, anticipating his own Reply comments in this proceeding, he notes:

the best use of AMTS spectrum is for transportation, including railroad, safety: and this is **not** for stand-alone PTC (which requires a very small amount of wireless data), but is for what SkyTel is planning and has publicly presented for years – certain advanced wireless for Intelligent Transportation Systems in the nation, including for the component of High Accuracy Location, and where SDR and Cognitive Radio are employed.

“Opposition to the Supplement to Showing Pursuant to Footnote 7,” Application File Nos. 0004153701, and 0004144435, July 1, 2011.

available for PTC use. His objections must be viewed for what they are – another effort to use the regulatory process for personal gain – and must be rejected.

Amtrak welcomes the Public Notice initiative to consider the spectrum necessary for implementation of PTC in a timely fashion. The record demonstrate a consensus for swift initiation of the proceedings necessary to provide at least 500 kHz of additional unencumbered spectrum for the rail industry's use. Amtrak strongly supports this approach and asks the Commission to act swiftly in this matter.

Respectfully Submitted,

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